



University of Tennessee, Knoxville

Trace: Tennessee Research and Creative Exchange

MTAS Publications: Hot Topics

Municipal Technical Advisory Service (MTAS)

9-1-2005

Hot Topic: Emergency Assistance and Mutual Aid in Tennessee: 2004 Update

Ray Crouch
Municipal Technical Advisory Service

Dennis Huffer
Municipal Technical Advisory Service

Follow this and additional works at: https://trace.tennessee.edu/utk_mtastop

 Part of the [Public Administration Commons](#)

The MTAS publications provided on this website are archival documents intended for informational purposes only and should not be considered as authoritative. The content contained in these publications may be outdated, and the laws referenced therein may have changed or may not be applicable to your city or circumstances.

For current information, please visit the MTAS website at: mtas.tennessee.edu.

Recommended Citation

Crouch, Ray and Huffer, Dennis, "Hot Topic: Emergency Assistance and Mutual Aid in Tennessee: 2004 Update" (2005). *MTAS Publications: Hot Topics*.
https://trace.tennessee.edu/utk_mtastop/97

This Bulletin is brought to you for free and open access by the Municipal Technical Advisory Service (MTAS) at Trace: Tennessee Research and Creative Exchange. It has been accepted for inclusion in MTAS Publications: Hot Topics by an authorized administrator of Trace: Tennessee Research and Creative Exchange. For more information, please contact trace@utk.edu.



MTAS

Municipal Technical Advisory Service

*In cooperation with the
Tennessee Municipal League*

#117

HOT
topic

September 1, 2005

EMERGENCY ASSISTANCE AND MUTUAL AID IN TENNESSEE: 2004 UPDATE

Ray Crouch Sr., Fire Management Consultant, and Dennis Huffer, Legal Consultant

EXECUTIVE SUMMARY

No community, regardless of size, can handle a huge disaster without help. In many instances working together, in both disasters and routine operations, will result in significant cost savings for government entities. Working together can take the form of creating a joint venture or purchasing services from one another or simply having an agreement in place to help each other should that help be requested. Whatever approach is taken, it is important to work out these agreements in advance of the need for the services so that there will be no misunderstandings or ill will created between the participants. Also, it is very important to cooperate with each other in a legal manner to limit exposure to additional liability or avoidable lawsuits.

In the past, there have been great misunderstandings and an almost universal lack of advance preparation for dealing with the issue of mutual aid, interlocal agreements, or emergency assistance. Legislation passed by the General Assembly of Tennessee during the 2004 regular session has greatly clarified these issues. Prior to the passage of this legislation, each government entity (city,

county, utility, nonprofit fire department, etc.) had to have a written mutual aid agreement with any other agency it thought or suspected they might ever help during a major disaster. This process was cumbersome, since the document had to be countersigned by all parties and, if revisions were made, the process had to be repeated to acquire all new signatures. However, the old law did not address compensation. Unless your individual agreement provided for circumstances where compensation would occur, FEMA policy prohibited reimbursement. Cities lost money in a presidential declaration of disaster. MTAS, CTAS, TML, and TCSA worked together to develop suggested legislation that became law in May of 2004 that greatly simplified this complex issue and provided compensation language to meet FEMA policy.

With the passage of Chapter No. 743, Public Acts of 2004, which became T.C.A. § 58-8-101 *et seq.*, the mutual aid process for government entities in Tennessee, as defined by the act, became very simple. A complete copy of the referenced chapter is attached as Appendix D.

September 1, 2005

EMERGENCY ASSISTANCE AND MUTUAL AID IN TENNESSEE: 2004 UPDATE

Ray Crouch Sr., Fire Management Consultant, and Dennis Huffer, Legal Consultant

As of June 30, 2004, all mutual aid agreements in Tennessee, except those extended by resolution of the governing body between May 14 and June 30, 2004, have been abolished and replaced by the statute. The statute contains a standardized mutual aid agreement, and this agreement is in effect between all government entities listed in the act. The good news is that you now have a written mutual aid agreement with every other city, county, utility, and nonprofit fire department in Tennessee. The full text of that mutual aid agreement is attached to this document. The document includes all the elements necessary to protect your liability and provide compensation under certain circumstances as well as other operational provisions that protect both people and equipment.

With the problem of mutual aid virtually solved by this new law, it is important to understand the other issues. If you routinely provide service outside your legal boundaries, a mutual aid agreement is not what you need. If you routinely respond to calls in another jurisdiction, you must use one of the other

legal methods for providing this service. Generally, the document you will use will be an **interlocal agreement**. An interlocal agreement is in essence a contract that can allow you to (1) sell or buy services from another agency, (2) develop joint operating agreements for cooperation of two or more agencies to provide services to multiple government entities, or (3) provide automatic aid agreements between two or more government entities to routinely assist each other under certain defined circumstances. (Appendix A of this document is a flow chart that lays out the relationships described herein.)

INTRODUCTION

No city, regardless of its size, is able to handle a major disaster without help. New York City needed help when planes hit the World Trade Center, Nashville needed help in the 2003 nursing home fire, Jackson needed help after the tornado hit, and Lawrenceburg needed help after unprecedented floods. The Tennessee General Assembly normally¹ allows municipalities to provide services beyond their borders in only two circumstances: (1) in an occurrence or an emergency that a requesting party **cannot** handle, and (2) by specific written agreement for an occurrence or an emergency that the

¹Some city charters allow responses outside the corporate limits at the city's discretion. The Uniform City Manager-Commission Charter, specifically T.C.A. § 6-21-703, is a good example. This section allows fire departments of cities incorporated under that charter to respond to a call anywhere in the state.

September 1, 2005

**EMERGENCY ASSISTANCE AND MUTUAL AID
IN TENNESSEE: 2004 UPDATE**

Ray Crouch Sr., Fire Management Consultant, and Dennis Huffer, Legal Consultant

requesting party **can** handle. Occurrences of an event that a jurisdiction cannot handle on its own are covered by the Mutual Aid and Emergency and Disaster Assistance Agreement Act of 2004 (referred to as the “act” in the remainder of this document). Occurrences that a jurisdiction can handle on its own are covered by the Interlocal Cooperation Act (T.C.A. § 12-9-101 and the following sections) along with other statutes that will be discussed later. It is critical to understand that the first decision to be made by a local government after an occurrence is whether or not it can or cannot handle the event using only its own resources.

OCCURRENCES YOU CANNOT HANDLE

For occurrences that your city cannot handle, you may use the Mutual Aid and Emergency and Disaster Assistance Agreement Act of 2004 to get help. Events requiring aid or assistance under the act are classified as occurrences or emergencies. If a house catches fire or there are shots fired at the local convenience store, that is an emergency in the ordinary sense of the word, but not necessarily under the act. These instances are only occurrences under the act. An occurrence, as defined by the act, is an event that could lead to substantial personal injury or property damage. This occurrence may become serious enough that the mayor may declare a state of emergency when he or she believes that the occurrence has overpowered the resources of the city/county/entity. Then,

the event becomes an emergency to the degree envisioned by the act. When local officials believe that the occurrence has exceeded their resources, they may call for help from other entities under the provisions of the act. The city then has 30 days to document this request for assistance and provide copies of the documents to the responding parties.

Obviously, the size of your city and the availability of resources will play a major roll in determining the specifics of when your resources have been overwhelmed. Once you call for help, all provisions of the act are immediately in force except for the compensation provisions, which are covered later. The purpose of the act was to make mutual aid in Tennessee simple and clear as well as to allow local governments to be efficient by sharing resources while protecting them from additional liability. This ensures that tort liability limits and other protections of the Tennessee Governmental Tort Liability Act (TGTLA) remain in place and eliminates the quagmire of forms and confusion that often existed over the extension of help to another local government.

OCCURRENCES YOU CAN HANDLE

Most occurrences are handled with a city's own resources. A city may handle an occurrence using only those resources that are actually owned and directly controlled by

September 1, 2005

**EMERGENCY ASSISTANCE AND MUTUAL AID
IN TENNESSEE: 2004 UPDATE**

Ray Crouch Sr., Fire Management Consultant, and Dennis Huffer, Legal Consultant

that city, or the city may choose to prepare itself to a higher level by calling in advance upon resources from other jurisdictions that it has planned to use in such events. The interlocal agreement is the document a city may use to ramp up its level of what it “can do” in advance of an occurrence. A city must decide what its level of “can do” is either by (1) not having any interlocal agreements; therefore, it must handle the event alone, or (2) entering into interlocal agreements and, together with its partners, handling the event as agreed in the written documents. The interlocal agreement is discussed in more detail in a later section.

COMPENSATION

The compensation provisions of the act begin only when the mayor (city or county) declares a state of emergency. When the requesting mayor declares that a state of emergency exists, the jurisdiction in which the emergency has occurred agrees to pay responding parties at the rates established by the act. The reason for this provision of a declaration of emergency by the mayor is to clearly establish the time frame in which compensation will be provided to the responding parties. If no local declaration of emergency is declared, then all aid provided will be free. Should the event approach the scale of a “disaster” the local mayor should begin to consider declaring a local state of emergency. The mayor should seek advice from the incident commander (person in

charge of the emergency scene) and from the city and/or county emergency management director(s) when making this important decision.

If the event is declared an emergency by the President of the United States, federal reimbursement of local expenses as provided by federal law is retroactive to the time that the emergency was declared by the mayor. Under current law, the federal government will reimburse 75 percent of the costs to the local government, including costs of *requested* responding parties. (Fire departments, law enforcement, public works, utilities, etc. must be specifically requested to respond; self-dispatch is strictly prohibited.) Department of Homeland Security/FEMA Policy 9523.6 clearly states, “There are no provisions for reimbursement for mutual aid when there is no formal written agreement.” Therefore, unless the issue of compensation is addressed in writing in the written mutual aid agreement, the federal government will pay no compensation. No problem. The act is the written mutual aid agreement between all government entities in Tennessee, and it addresses the issue of compensation. Unless a city elects to pass a resolution exempting itself from the act, it has a formal written agreement that addresses the issue of compensation when an emergency is declared. Under previous mutual aid law, most agreements in existence within Tennessee did not

September 1, 2005

**EMERGENCY ASSISTANCE AND MUTUAL AID
IN TENNESSEE: 2004 UPDATE**

Ray Crouch Sr., Fire Management Consultant, and Dennis Huffer, Legal Consultant

address the issue of compensation; therefore, many cities, responding to a call for help by their neighbor, would have received no federal reimbursement even if the event ultimately became a presidentially declared disaster. Cities should be careful if they exempt themselves from the act to address compensation issues in any agreements they substitute for the act. It would be impossible to imagine a set of circumstances that would make it in the best interests of local governments in Tennessee to exempt themselves from the act and not replace the act with a comprehensive statewide mutual aid agreement that they have written and had all parties ratify. This would put them right back where they were before the act became law.

Personnel time, equipment, supplies, or other costs directly associated with handling the emergency are all eligible for reimbursement. For a responding city to collect its share of the reimbursement, an invoice must be submitted to the requesting city as soon as possible after the event and, in any case, no later than 60 days after the incident. If your itemized invoice is not submitted within 60 days, you relinquish your rights to reimbursement. It is the responsibility of the requesting party to assemble the documentation for all responding parties and submit them in a timely manner to the Tennessee Emergency

Management Agency or to another DHS/FEMA designated recipient.

Any costs that occurred before the requesting mayor declared a state of emergency may be counted as part of your 25 percent matching local share. According to FEMA Policy 9523.6, "If the [mutual aid] agreement provides for an initial period of unpaid assistance before the receiving entity reimburses the providing entity, assistance during that period may be credited to the non-federal cost share...." This means that all costs occurring in the period before the local declaration of emergency will be counted in your favor. Good recordkeeping will make or break you on the documentation of these costs, so document everything. The market value of volunteer labor can also be credited to your 25 percent share of the costs. Keep up with the number of hours worked by volunteer firefighters and other volunteers. Remember, however, that there is no guarantee that these volunteer and advance costs will add up to the full 25 percent, so you may not receive 100 percent reimbursement. You will get something between 75 percent and 100 percent of your actual costs, depending on the circumstances of the incident.

USING INTERLOCAL AGREEMENTS

Certainly, there are many ways that a city can prepare itself to handle occurrences without

September 1, 2005

**EMERGENCY ASSISTANCE AND MUTUAL AID
IN TENNESSEE: 2004 UPDATE**

Ray Crouch Sr., Fire Management Consultant, and Dennis Huffer, Legal Consultant

any aid or emergency assistance from an outside source. The Interlocal Cooperation Act (T.C.A. § 12-9-101 *et seq.*), as well as other laws that remain on the books, provide for and support the use of advance planning and cooperation of local governments through the use of service and operational agreements. The Interlocal Cooperation Act and some other specific laws covering law enforcement, fire protection and the relationship of cities and counties are listed, referenced and summarized in Appendix C of this document.

Agreements or contracts for providing regular, routine, emergency-type service can come into play in both occurrences and emergencies. When an event, such as a fire in a single-family dwelling occurs, your first decision is (a) We *can* handle the event, or (b) We *cannot* handle the event. This is *not* the time to say, “We can handle this, but I wish we had some help.” It is too late for “wishing.” If you decide the city is going to handle this on its own, there are two levels: (a) using only your city’s resources, or (b) using all your available resources, including all interlocal agreements that may be in place at the time. The only other choice is to cry, “HELP” (using the act) and wait and see what shows up.

Before the event, you have both time and opportunity to write with all the interlocal agreements you want. You can have multiple

agreements or you can have a single interlocal agreement that addresses the issues of automatic response, joint teams, contracts for service or any other items that you choose to agree on in a written document. The interlocal agreement can provide you with advance knowledge that you will have help from specific sources, with or without compensation, and however you have agreed in the written documents. The difference between mutual aid and an interlocal agreement is very significant. With mutual aid, you yell “Help,” and whoever can sends you whatever they can spare. With an interlocal agreement, you get the help you planned and trained for, and there are few, if any, surprises.

If the house that caught fire in the previous example is located three miles outside town, but the town has a written agreement (interlocal agreement) with the county that the town will provide fire protection within five miles of the town’s borders for an agreed-upon annual fee, this occurrence requires the town to respond based on the agreement. The same response would not have been required if the contract were not in place. You may wish you had help, and you may not be able to do the job as well without help, but the truth is, you CAN handle this occurrence without aid, short of some extraordinary circumstances. The final result of how you handle the event can be totally different.

September 1, 2005

**EMERGENCY ASSISTANCE AND MUTUAL AID
IN TENNESSEE: 2004 UPDATE**

Ray Crouch Sr., Fire Management Consultant, and Dennis Huffer, Legal Consultant

Extinguishing a fire in a single-family home, without some very extenuating circumstances, should be well within the normal range of services provided by any fire department. If this home is closer to the town's fire department than to the county fire department and if an existing automatic response agreement was in place at the time of the occurrence, then the town could have responded simultaneously with the county fire department. Remember, "mutual aid" is no excuse for poor or no planning. Every fire department should be able to handle a simple house fire without mutual aid. If you are going to need help, admit it now and use an interlocal agreement to provide such services as automatic response, joint teams, or contracts for service to provide for that aid in advance. The act was and is designed for unforeseen and catastrophic occurrences and emergencies that you cannot handle with your own resources.

Written automatic response agreements (executed with an interlocal agreement) are excellent methods for multiple jurisdictions with each having some resources to contribute to jointly handle occurrences that individually might take longer using just their own resources. Under these agreements, even though an occurrence or emergency happens in one jurisdiction, the neighboring jurisdiction will automatically respond without a call for help from the affected jurisdiction. One example where this is advantageous is when there is a school

or nursing home located in one city, but the neighboring city's fire station is closer and able to respond sooner to a fire in the facility. Automatic response allows service to be provided by contract while legally ignoring geopolitical boundaries and thus, by agreement, creating better, more efficient government services.

Another example of using automatic response agreements to solve specific problems and save money would be if the total pump capacity of a particular city is adequate for most of its buildings, but a few larger buildings have needed fire flows that exceed the total pump capacity. An automatic response agreement could be used to allow the neighboring city or county to send an additional pumper with enough pump capacity to meet the needed flows on initial dispatch just for the specific list of buildings having high needed fire flows.

Still another example of when a written agreement is needed and desirable is when cities want to share resources to provide specialized services through the use of joint teams. Smaller cities may have only a rare or occasional need for a hazardous materials or SWAT team, bomb squad, or other such services. Since there is an occasional need for these services, however, the city might choose to "purchase" this service from another jurisdiction. This can be accomplished through an interlocal agreement establishing the details of how this

September 1, 2005
EMERGENCY ASSISTANCE AND MUTUAL AID
IN TENNESSEE: 2004 UPDATE

Ray Crouch Sr., Fire Management Consultant, and Dennis Huffer, Legal Consultant

service will be provided and how the service will be paid for. There might be an annual stand-by fee, a per-use fee, or a combination of the two. There could be a barter or trade for services. For instance, one jurisdiction could have a SWAT team and the other could have a hazmat team with both groups of citizens receiving the services but paying for only one service.

The interlocal agreement is a tool that can be used by cities and other jurisdictions to provide common or joint services that would otherwise strain the resources of any one partner to the agreement. Regarding partners, you should always provide a copy of all interlocal agreements to your insurance carrier so they will know the terms of your respective arrangements. To the extent that an occurrence or emergency can be planned for in situations like the examples provided and in other occurrences, it is highly desirable that cities and other jurisdictions have the necessary interlocal agreements in place in advance to provide for increased safety and smooth operation at the scene. However, when circumstances occur that put a city in the “cannot handle” boat, the act was designed to allow you to call for help.

MUTUAL AID OUTSIDE TENNESSEE

For cities and counties that are near the state border of Tennessee, this new law does *not* allow you the same mutual aid privileges outside Tennessee as provided for in the act

between local governments within the state. However, the law provides an open invitation to other states to adopt a similar law opening the door for agreements that do cross state lines in the future. Section 58-8-113 of the act reads, “When any other state provides that it will recognize and enforce the Tennessee Governmental Tort Liability Act...arising from aid or assistance provided by a Tennessee governmental entity in that state, Tennessee shall recognize and enforce that state’s laws relative to the tort liability of its political subdivisions...” This means that if one of our adjoining states agrees to recognize our tort liability limits and other protections of the TGTLA while we are in their state, we, in turn will recognize their limits. This will require legislation from the other states before it can go into effect.

EFFECT ON EXISTING DOCUMENTS

When the governor signed the act on May 24, 2004, local governments were given until July 1, 2004, to pass a resolution that affirmed that they wanted to keep any existing mutual aid agreements in operation. If a local government did not pass a resolution continuing these mutual aid agreements until they expire or are renewed, ALL such agreements have expired and been replaced by the act. If a local government did pass a resolution extending existing agreements, it needs to carefully review such agreements to make sure that compliance with federal law and FEMA policy is provided for within

September 1, 2005
EMERGENCY ASSISTANCE AND MUTUAL AID
IN TENNESSEE: 2004 UPDATE

Ray Crouch Sr., Fire Management Consultant, and Dennis Huffer, Legal Consultant

the text. Otherwise, loss of compensation, possible loss of tort liability limits and other protections of the TGTLA, as well as other problems that existed within the document may continue. Again, the new law does not affect existing automatic response agreements, service contracts, and other written agreements unless they were a clause in a mutual aid agreement that may have been abolished by the act on June 30, 2004. For instance, if you had a comprehensive document that included provisions for both mutual aid and other operational agreements, the document could be suspect, especially if it was labeled as a mutual aid agreement. While it could be argued that only the mutual aid provisions of the document were replaced by the act, the safer course would be to use the act as your mutual aid agreement and use an interlocal agreement to provide for all other joint service agreements or contracts. The act does not affect other existing operational and service agreements, except as noted. If you have a contract to provide fire protection to a specific area outside the city limits or existing joint operational teams where two or more local governments are partnered, or if you have automatic response agreements, these documents are not abolished by the act. No jurisdiction is prohibited from developing new agreements now or in the future.

The act actually puts a basic statewide mutual aid agreement into general law effective July 1, 2004. (A copy of the act is

attached as Appendix D.) Under this law, a government entity, as defined by the act, has a written mutual aid agreement with and may legally go anywhere within the state of Tennessee when requested by another local government. When the provisions of the act are followed, your tort liability limits and other protections of the TGTLA remain intact, and you will comply with all federal and state law regarding mutual aid and with FEMA policy for compensation when warranted.

SUMMARY

The Mutual Aid and Emergency and Disaster Assistance Agreement Act of 2004 is the only mutual aid document you need for operations within Tennessee. If you desire to have your own documents, you are allowed to do so under the act, but caution is key. Make sure that you comply with all the legal, financial, and reporting requirements that must be met for effective and reimbursable mutual aid compliance. Each government entity should develop interlocal agreements as needed to support emergency and common non-emergency occurrences. You should not count on the act for routine and everyday operations. For events that you CAN handle but choose to have some preplanned help with, use the interlocal agreement. For events that you CANNOT handle with your own resources, you can confidently call for help under the provisions of the act. (See Appendix A for a flow chart that

September 1, 2005
EMERGENCY ASSISTANCE AND MUTUAL AID
IN TENNESSEE: 2004 UPDATE

Ray Crouch Sr., Fire Management Consultant, and Dennis Huffer, Legal Consultant

provides a visual summary of some of the relationships available under the act.) You do not have to wait for “The Big One” to cooperate effectively and efficiently with your neighboring local governments. Now is the time to decide what you can handle and when you will need help.

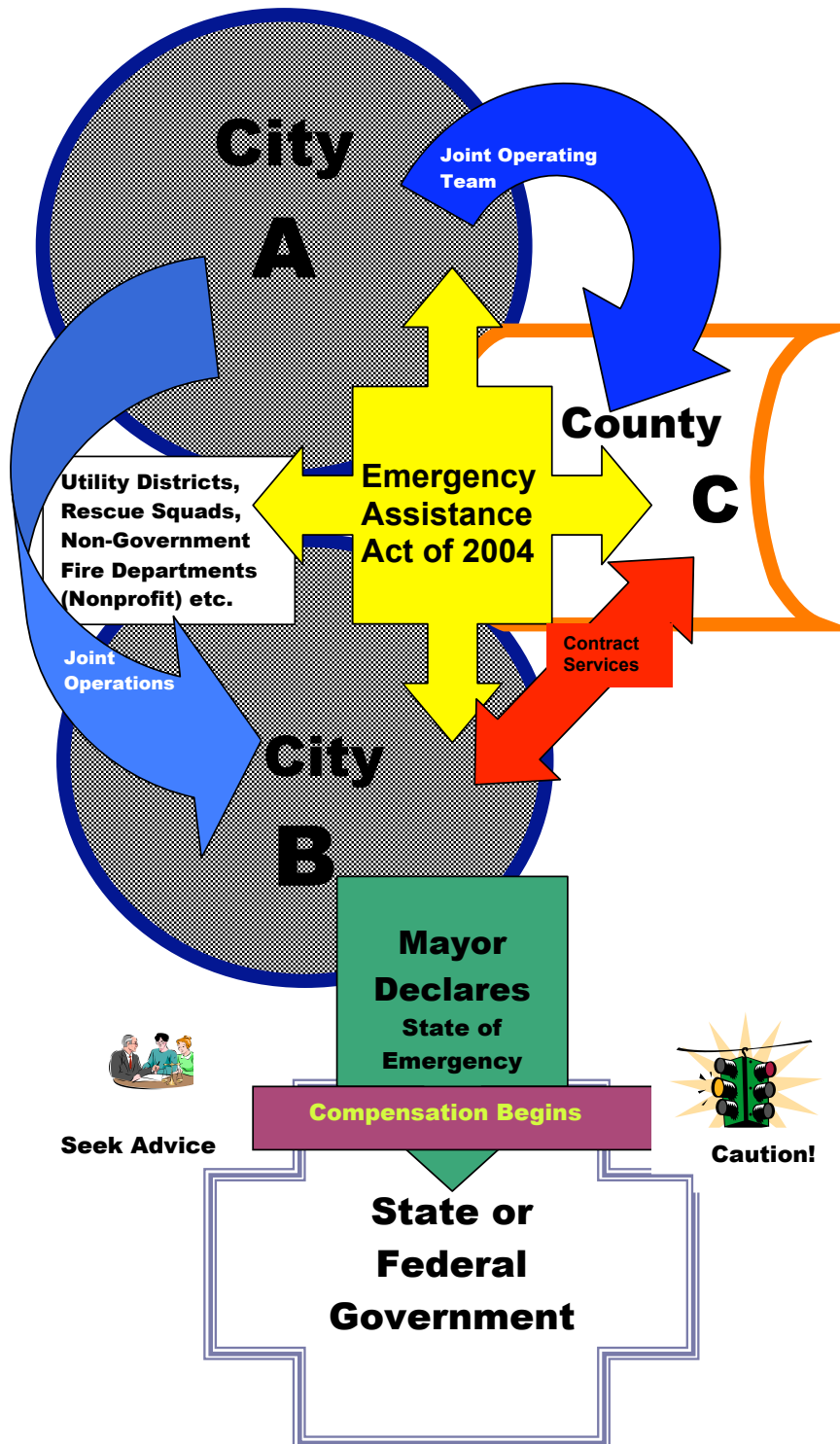
Mutual Aid, Interlocal Agreements, and Emergency Assistance in Tennessee

Emergency Assistance Act of 2004 provides mutual aid agreements between cities, counties and all other entities mentioned in the act. You do not have to take any action! Mutual aid agreement is provided in the actual statute.

Joint operating teams such as hazardous materials teams and other specialized operations can be jointly operated saving each entity from having the expense of a separate independent team. These teams can be formed using an interlocal agreement.

Cities and counties can contract with each other to provide services by use of an interlocal agreement.

When a mayor declares an emergency, state and federal resources may be brought in to assist. If the President declares the emergency, all parties are eligible for federal reimbursement at current rates.



RC/UT/IPS/MTAS/2004

Executive Order Of the Mayor

Declaration of a State of Emergency

As Mayor of the _____ of _____, Tennessee,
under authority of *Tennessee Code Annotated* Section 58-8-104, I hereby declare
a **State of Emergency** within this jurisdiction based upon the following event(s):

MAYOR

Date: _____

Time: _____

INTERLOCAL AGREEMENT FOR AUTOMATIC RESPONSE OF FIRE, RESCUE AND EMS SERVICES

Pursuant to T.C.A. § 6-54-601, *et seq.* and T.C.A. § 12-9-104 *et seq.*

THIS AGREEMENT entered as of the _____ day of _____, 20____, by and between _____ COUNTY, TENNESSEE, hereinafter called _____ County and the CITY OF _____, TENNESSEE, hereinafter called _____ (city).

WHEREAS, Sections 12-9-101 through 12-9-109, *Tennessee Code Annotated*, authorizes public agencies of the state to enter into interlocal agreements; and

WHEREAS, Sections 6-54-601 through 6-54-603, *Tennessee Code Annotated*, specifically authorizes incorporated cities to enter into agreements with counties for fire fighting assistance; and

WHEREAS, the parties hereto desire to avail themselves of the authority conferred by these laws; and

WHEREAS, the purpose of this agreement is to provide each of the parties through their cooperation, a predetermined plan by which each might render aid to the other as needed for fire fighting, rescue, emergency medical (EMS), or related technical support services under specific arrangements as provided herein; and

WHEREAS, it is deemed in the public interest for the parties hereto to enter into an agreement for automatic response with regard to fire fighting, rescue, emergency medical (EMS), or related technical support services to provide aid as needed to assure each party of adequate depth of protection.

NOW THEREFORE, pursuant to *Tennessee Code Annotated* § 6-54-601 and § 12-9-102 *et seq.*, and in consideration of the mutual covenants contained herein, the parties agree as follows:

1. The parties agree to provide automatic response to the specific industrial, commercial and selected other properties as listed on Exhibit 1 as attached to this document and further, to provide automatic response to certain areas called “Automatic Response Zones” as the boundaries of such zones are described in Exhibit 1, attached to this document. Adding or subtracting specific properties or zones, when agreed to by all the mayors and fire chiefs of the parties to this agreement may amend Exhibit 1.
2. Automatic response is defined as the simultaneous dispatch and response of two or more fire departments to the same property, area, or zone regardless of the actual location or jurisdiction of the property.

3. This agreement shall be valid between the signed parties when the mayor and fire chief of the respective political jurisdictions execute it pursuant to the ordinance/resolution of each jurisdiction authorizing the mayor to execute it.
4. With the exception of the specific services described in this inter-local agreement, all other requests for aid or assistance between the parties shall be governed by *Tennessee Code Annotated § 58-8-101 et seq.*

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year written above.

_____ COUNTY

By: _____ By: _____
Mayor Fire Chief

CITY OF _____

By: _____ By: _____
Mayor Fire Chief

Approved as to form: _____

City and/or County Attorneys

EXHIBIT 1:

Specific Properties:

1. Anytown High School
2. Big Employer Industrial Plant
3. Shady Grove Manufacturing

Automatic Response Zones:

1. Big Bend Industrial Park – All buildings and properties contained therein.
2. Twelve square blocks of Anytown near the County Fire Station #9. This 12 block boundary is described as follows: on the north, Maple Street, on the east Yellow Creek Road, on the south the city limits and on the west the Muddy River.

CHAPTER NO. 743**SENATE BILL NO. 3139****By McNally, Ketron, Crowe, McLeary, Kilby, Williams, Norris****Substituted for: House Bill No. 3094****By Rinks, Casada, Shaw**

AN ACT to amend Tennessee Code Annotated, Title 7 and Title 58, relative to mutual aid, emergency and disaster assistance, and homeland security.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 58, is amended by adding the following as new Chapter 8:

58-8-101. This act shall be known and may be cited as the "Mutual Aid and Emergency and Disaster Assistance Agreement Act of 2004".

58-8-102. As used in this chapter, unless the context otherwise requires:

(1) "Activities under service agreements" means day-to-day cooperation and activities based upon interlocal service or operational agreements or contracts between or among governmental entities;

(2) "Aid" means the same as assistance except that aid is provided in an occurrence during any period of time when a state of emergency has not been declared;

(3) "Assistance" means the provision of personnel, equipment, facilities, services, supplies, and other resources to assist in firefighting, law enforcement, the provision of public works services, the provision of emergency medical care, the provision of civil defense services, or any other emergency assistance one governmental entity is able to provide to another in response to a request for assistance in a municipal, county, state, or federal state of emergency;

(4) "Disaster" means any natural, technological, or civil emergency that results in substantial injury or harm to the population or substantial damage to or loss of property of sufficient severity and magnitude that there is a declaration, resulting from the emergency, of a disaster by the governor under state law or the president under federal law;

(5) "Emergency" means an occurrence or threat of an occurrence, whether natural or man-made, that results in or may result in substantial injury or harm to the population or substantial damage to or loss of property and which results in a declaration of a state of emergency by a municipal mayor, a county mayor or executive, the governor, or the president;

(6) "Emergency assistance" means assistance provided by a participating governmental entity to another under this act;

(7) "Employee" means paid, volunteer, and auxiliary personnel and emergency management workers of a governmental entity;

(8) "Governmental entity" means any political subdivision of the state, including, but not limited to, any incorporated city or town, metropolitan government, county, utility district, school district, nonprofit volunteer fire department receiving public funds and recognized under Title 68, Chapter 102, Part 3, rescue squad, human resource agency, public building authority, airport authority, and development district, or any instrumentality of government created by one (1) or more of these named governmental entities or the general assembly, or any entity otherwise recognized by state law as a local governmental entity;

(9) "Occurrence" means the imminent threat of an event or an actual event and its aftermath, whether natural or man-made, that could lead to substantial bodily injury or property damage and that could lead to the declaration of a state of emergency;

(10) "Participating governmental entity" means any governmental entity in the state that requests or responds to a request for aid or assistance under this act;

(11) "Responding party" means a governmental entity that has received and responded to a request to provide mutual aid or assistance to another governmental entity under this act; and

(12) "Requesting party" means a governmental entity that requests aid or assistance from another governmental entity under this act.

58-8-103. (a) On and after July 1, 2004, the provision and receipt of mutual aid and assistance by participating governmental entities shall be governed by this act, and no separate agreement is necessary except with regard to aid or assistance provided to entities in other states, and governmental entities that decide to provide aid and assistance under a separate agreement. Governmental entities may choose by resolution of their governing bodies to continue agreements existing on July 1, 2004, until they expire or are terminated in accordance with their terms. Governmental entities may also by resolution extend existing agreements or make new agreements relative to mutual aid and assistance after July 1, 2004. When there is an agreement between or among governmental entities, the provisions of that agreement and applicable authorizing law govern activities under the agreement. For any governmental entity with no agreement with the particular requesting party governing mutual aid or assistance, the provisions of this act apply to both parties.

(b) It is not the intent of this act to affect activities under service agreements. Service and operational agreements may continue to be made and enforced under Sections 5-1-113, 5-1-114, 5-16-107, 5-19-106, 6-54-307, 6-54-601, Title 12, Chapter 9; Title 49, Chapter 2, Part 13, or other applicable law.

(c) The purposes of this act are to authorize mutual aid and to enhance public safety and homeland security by facilitating assistance among governmental entities in any state of emergency or declared disaster while conforming to federal guidelines relative to reimbursement of costs for assistance rendered.

(d) Aid and assistance to entities in other states continues to be governed by the Interlocal Cooperation Act, compiled in Title 12, Chapter 9, and other applicable law.

58-8-104. (a) The mayor of a municipality or the mayor or county executive of a county or metropolitan government may declare a local state of emergency affecting such official's jurisdiction by executive order consistent with and governed by § 58-2-110(3)(A)(v).

(b) The mayor or executive of any municipality or county, or such official's designee, may declare a state of emergency for such official's municipality or county regardless of whether the event in question affects only that jurisdiction or multiple jurisdictions.

(c) The declaration of a state of emergency by a jurisdiction entitles the responding party or parties to cost reimbursement as provided in § 58-8-111. The requesting party is required to make this reimbursement to the responding party or parties.

(d) The municipal mayor or county mayor or executive may declare the state of emergency at any time during the imminent pendency or happening of the occurrence.

58-8-105. (a) When a governmental entity is affected by an occurrence that its resources will not be adequate to handle, the governmental entity may request aid through the appropriate emergency management employee or official, or a county or municipality may declare a local state of emergency as provided in § 58-8-104 and request assistance by communicating the request to a potential responding party or multiple potential responding parties. Requests for aid or for assistance must be made by the appropriate official or employee to the emergency communications dispatch center of potential responding parties or other officials authorized by the potentially responding party to respond to requests under this act.

(b) Each request for aid or assistance may be made verbally and should, to the extent possible, include the following:

(1) A statement that an occurrence is imminent, in progress, or has occurred. The statement should also indicate whether a declaration of a state of emergency has been made and give a general description of the occurrence or emergency, including an initial estimate of the damages and injuries sustained or expected;

(2) Identification of the service functions for which aid or assistance is needed and the particular type of aid or assistance needed;

(3) The amount of personnel, equipment, materials, and supplies needed;
and

(4) An estimated time and place for a representative of the requesting party to meet the responding party.

(c) Each request for aid or assistance may include the following if known or necessary:

(1) An estimate of the amount of time, aid, or assistance that will be needed.

(2) Identification of the types of infrastructure for which aid or assistance is needed (e.g., water and sewer, streets, gas, electric, or other infrastructure); and

(3) Identification of the need for sites, structures, or other facilities outside the requesting party's jurisdiction to serve as relief centers or staging areas for incoming emergency goods or services.

(d) All requests for assistance shall be confirmed in writing to the responding party or parties within thirty (30) days of the initial request. Parties shall keep records of all requests made for assistance under this act.

58-8-106. Any participating governmental entity may, upon receiving a request for mutual aid in an occurrence or for assistance from a requesting party in a municipal, county, state, or federal state of emergency, send its personnel and equipment outside its boundaries and into any other jurisdiction necessary to respond to the request.

58-8-107. (a) This act does not create a duty on participating governmental entities to respond to a request for aid or assistance nor to stay at the scene of an occurrence or emergency for any length of time. Upon receipt of a request for aid or assistance, a potential responding party shall determine whether and to what extent it will provide the aid or assistance. If the potential responding party determines in its complete discretion that it is not in its best interest to provide aid or assistance, it shall notify the requesting party of its decision as soon as possible. If the potential responding party determines that aid or assistance can be provided, it shall communicate the following information to the requesting party as soon as possible:

(1) A description of what personnel, equipment, and other resources it will provide;

(2) An estimate of the length of time aid or assistance will be available; and

(3) An estimated time of arrival at the scene or designated meeting place.

(b) The responding party may withdraw aid or assistance at any time. The responding party shall notify the requesting party as soon as possible of any decision to withdraw aid or assistance.

(c) The provisions of this section that require certain actions are directory rather than mandatory and do not create a public or special duty on the part of any participating governmental entity.

58-8-108. The representative or representatives of the requesting party authorized to be in charge of emergency response at the scene shall be in command at the scene as to strategy, tactics, and overall direction of the operations. The requesting party may delegate command as needed. Generally accepted incident command procedures shall be implemented and followed. The responding party shall designate supervisory personnel for its employees sent to render aid or assistance. All orders or directions regarding the operations of the responding party shall be relayed to the responding party through these designated supervisory personnel unless a different arrangement is determined by the parties in the field to be more advantageous.

58-8-109. (a) When employees of the responding party are sent from the employing jurisdiction to other jurisdiction or jurisdictions in response to a request for aid or assistance under this act, they have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the jurisdiction in which they normally function.

(b) Employees of the responding party will be considered as the responding party's employees at all times while performing their duties under this act for purposes of the workers' compensation law and for that purpose will be considered as acting within the course and scope of their employment with the responding party.

(c) Under § 29-20-107(f), for liability purposes only, employees of the responding party are to be considered employees of the requesting party while performing their duties under this act at the scene of the occurrence or emergency or other locations necessary for the response while under the supervision of the requesting party. At all other times in the response, including traveling to the scene and returning to the employing jurisdiction, such employees are to be considered for liability purposes to be employees of the responding party.

58-8-110. Nothing in this act shall be construed to remove any immunity from, defenses to, or limitation on liability provided by the Tennessee Governmental Tort Liability Act or other law.

58-8-111. (a) Except as provided in this section, the requesting party shall pay the responding party all documented costs incurred by the responding party in extending assistance to the requesting party under this act. The requesting party is ultimately responsible for reimbursement of all eligible expenses, not to exceed the Federal Emergency Management Agency's reimbursement fee schedules.

(b) Eligibility for reimbursement begins immediately upon the declaration of the state of emergency. The responding party is entitled to receive payment for 1/2 its reimbursable costs for the first six (6) hours of its response after the state of emergency is declared. The responding party is entitled to one hundred percent (100%) reimbursement of eligible costs incurred after six (6) hours are exceeded. Time periods for the response subject to reimbursement shall be calculated from the time the state of emergency is declared or the time the responding party leaves its jurisdiction, whichever occurs later, to the time it returns. Reimbursement of personnel, equipment, and materials and supply costs are all subject to the limitations of this subsection.

(c) During the period of assistance, the responding party shall continue to pay its employees according to then-prevailing wages, including benefits and overtime. The requesting party shall reimburse the responding party for all direct and indirect payroll costs, including travel expenses, incurred during the period of assistance, including but not limited to, employee retirement benefits as determined by generally accepted accounting principles. The requesting party is not responsible for reimbursing any amounts paid or due as benefits to responding party's personnel under the terms of the Tennessee Workers' Compensation Act, compiled in Title 50, Chapter 6.

(d) The requesting party shall reimburse the responding party for the use of its equipment during the period of assistance according to the Federal Emergency Management Agency fee schedules for hourly rates. For instances in which the costs are reimbursed by the Federal Emergency Management Agency, eligible direct costs shall be determined in accordance with 44 C.F.R. 206.228.

(e) The requesting party shall reimburse the responding party for all material and supplies furnished by it and used or damaged during the period of assistance, except for the cost of equipment, fuel, and maintenance materials, labor, and supplies, which shall be included in the equipment rate unless it is damaged and the damage is caused by the gross negligence, willful and wanton misconduct, intentional misuse, or recklessness of the responding party's personnel. The measure of reimbursement shall be determined in accordance with 44 C.F.R. Part 13 and applicable Office of Management and Budget (OMB) circulars.

(f) The responding party shall maintain records and submit invoices for reimbursement by the requesting party. For instances in which costs are reimbursed by the Federal Emergency Management Agency, the requesting party must submit requests for reimbursement to the Tennessee Emergency Management Agency on forms required by Federal Emergency Management publications, including 44 C.F.R. Part 13 and applicable OMB circulars. The reimbursement request shall include the certification or level of training of the personnel who responded and the type of equipment that was sent.

(g) The responding party shall forward the reimbursable costs with an itemized invoice to the requesting party as soon as possible, but no later than sixty (60) days after the provision of assistance has ended.

(h) Nonparticipating governmental entities and participating governmental entities that have separate agreements with nonparticipating governmental entities, may by agreement provide for different reimbursement provisions.

(i) The preceding provisions of this section do not apply to aid or assistance provided under § 58-2-113 at the request of the Tennessee Emergency Management Agency. Reimbursement of costs for aid or assistance provided in these situations is governed by § 58-2-113 and any other applicable provision of Title 58, Chapter 2.

58-8-112. Governmental entities that are parties to existing mutual aid agreements may by resolution of their governing bodies determine to continue to operate under those agreements until they expire or are terminated. If a governmental entity does not affirm the continued existence of the agreement, it shall expire on July 1, 2004, and the provisions of this act apply. If the governmental entity affirms an

agreement, the terms of the agreement and applicable authorizing law will continue to govern activities under the agreement. Mutual aid agreements between Tennessee governmental entities and governmental entities in other states are not affected by this act and continue to be authorized and governed by the Interlocal Cooperation Act compiled in Title 12, Chapter 9, Part 1, and other applicable law. Except for the continuation of existing agreements as provided in this section, any new agreements made after July 1, 2004, and aid or assistance provided at the request of Tennessee Emergency Management Agency under § 58-2-113, this act is the exclusive method for providing mutual aid and emergency assistance between governmental entities.

58-8-113. In addition to any other authority provided by this act, any governmental entity may provide aid or assistance in any area of the state to any state or federal agency upon request by the state or federal agency, and the governmental entity and its employees will be subject to the same protections and immunities they have under this act in furnishing aid or assistance to other governmental entities. The provisions of this section and any other portion of this act are in addition to and not in substitution for, and do not diminish, the authority provided in § 58-2-113 or any other provision of law that authorizes a local governmental entity to respond to a request for aid or assistance from the Tennessee Emergency Management Agency or any other state or federal agency. "Nothing in this chapter shall be construed to require that employees of the responding party are to be considered employees of the state or any of its agencies for any purpose."

58-8-114. When any other state provides that it will recognize and enforce the Tennessee Governmental Tort Liability Act and other Tennessee laws governing the tort liability of Tennessee's governmental entities and their employees in any case brought in that state's courts against the governmental entity or its employees arising from aid or assistance provided by a Tennessee governmental entity in that state, Tennessee shall recognize and enforce that state's laws relative to the tort liability of its political subdivisions and their employees and agents in any case brought in a Tennessee court against the political subdivision or its employees and agents arising from aid or assistance provided by the political subdivision of that state in Tennessee.

58-8-115. (a) Notwithstanding the provisions of Section 58-8-111(b), a governmental utility system that is a responding party is eligible for reimbursement and entitled to one hundred percent (100%) reimbursement of eligible costs after the state of emergency is declared.

(b) For purposes of a governmental utility system that is a responding party, the words "then-prevailing wages, including benefits and overtime" in Section 58-8-111(c) mean the present wage structure, including benefits and overtime, of the governmental utility system that is a responding party.

(c) For purposes of this section, "governmental utility system" means a governmental entity that provides electric, gas, sewer, water, wastewater, telephone, cable or other like service, or any combination of these services, and is limited to these operations of the governmental entity and does not extend to other operations of function of the governmental entity.

SECTION 2. Tennessee Code Annotated, Section 58-2-111, is amended by deleting subsections (a) and (b), and subdivisions (1) through (9) of subsection (c).


SECTION 3. The Tennessee Code Commission is directed to recodify Tennessee Code Annotated, § 58-2-111(c)(10), as a section in Title 7, Chapter 51.

SECTION 4. Tennessee Code Annotated, Section 58-2-112, is deleted in its entirety.

SECTION 5. If any part of this act is declared invalid, other portions of the act that can be given effect without the invalid part shall remain in effect, and to that end the provisions of this act are declared severable.

SECTION 6. This act shall take effect July 1, 2004, the public welfare requiring it.

PASSED: May 6, 2004


JOHN S. WILDER
SPEAKER OF THE SENATE
JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 24th day of May 2004


PHIL BREDESEN, GOVERNOR

September 1, 2005

EMERGENCY ASSISTANCE AND MUTUAL AID

IN TENNESSEE: 2004 UPDATE

Ray Crouch Sr., Fire Management Consultant, and Dennis Huffer, Legal Consultant

MTAS OFFICES

Knoxville (Headquarters) . . . (865) 974-0411	Jackson (731) 423-3710
Johnson City (423) 854-9882	Nashville (615) 532-6827
(423) 282-0416	Martin (731) 587-7057

The Municipal Technical Advisory Service (MTAS) is a statewide agency of The University of Tennessee Institute for Public Service. MTAS operates in cooperation with the Tennessee Municipal League to provide technical assistance services to officials of Tennessee's incorporated municipalities. Assistance is offered in areas such as accounting, administration, finance, public works, ordinance codification, and wastewater management.

MTAS Hot Topics are information briefs that provide a timely review of current issues of interest to Tennessee municipal officials. Hot Topics are free to Tennessee local, state, and federal government officials and are available to others for \$2 each. Photocopying of this publication in small quantities for educational purposes is encouraged. For permission to copy and distribute large quantities, please contact the MTAS Knoxville office at (865) 974-0411.

www.mtas.tennessee.edu

The University of Tennessee is an EEO/AA/Title VI/Title IX/Section 504/ADA/ADEA institution.
MTAS0758 • E14-1050-000-186-06